

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4457 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

HASUMATI H SHAH

Versus

PRESIDENT

Appearance:

MR VS MEHTA for Petitioner

NOTICE SERVED for Respondent No. 1

NOTICE NOT RECD BACK for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/07/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution the petitioner has challenged the judgement and order dated 25.7.1983 of the Tribunal constituted under the Gujarat Secondary Education Act in Appeal No.1 of 1982 with Application No.73 of 1983.

2 The petitioner was appointed as an Assistant Teacher in the school run by Shri Soja Kelavani Mandal at Soja, District Mehsana. The petitioner's services were terminated in the year 1981 on the ground that the charges levelled against her were proved. In the inquiry conducted against her she did not remain present though served. The school management sent the proposal to the District Education Officer under section 36(5) of the Act. The District Education Officer granted the approval. Hence, the petitioner challenged the order of the school management and the approval granted by the DEO in the aforesaid proceedings.

At the hearing before the Tribunal the petitioner did not remain present. The Tribunal proceeded to hear both the application and appeal on merits and after recording evidence of the Headmaster of the respondent-school dismissed the appeal as well as application on merits by the order dated 25.7.1983. The petitioner thereafter on 26.7.1983 appeared before the Tribunal with an application stating that the petitioner had suddenly fallen ill on 25.7.1983 and had become unconscious and was required to take treatment from the government hospital and therefore she could not remain present. The Tribunal dismissed the said application on the ground that the matter was heard and decided on merits on 25.7.1983 and the Tribunal thought it fit to not to rehear the matter. Thereafter the petitioner again filed an application for review, which came to be rejected by the Tribunal on 21.9.1983 on various grounds including the ground that an application for review was not maintainable under the provisions of the Act and also on the ground that there was no apparent mistake. It also appears that the Tribunal did not believe the petitioner's case that she was suddenly taken ill on 25.7.1983.

3 In the present petition the petitioner has challenged the aforesaid judgement dated 25.7.1983 as well as the subsequent orders rejecting the petitioner's application for review. In response to the notice of Rule issued by this Court affidavit-in-reply dated 9.9.1985 of Shivilal Ravidas Patel and an additional affidavit dated 19.9.1985 of the same deponent were filed. In the additional affidavit-in-reply filed by the school management it is pointed out that earlier the present petitioner filed Special Civil Application No.617 of 1984 before this Court challenging the very same orders of the Tribunal and after hearing the learned counsel for the petitioner in that petition this Court passed on 7.2.1984 the following order:-

"No case for interference because the Tribunal found that there was no error apparent on the face of the record that will permit to review its order Exh.A."

Thereafter the present petitioner filed M.C.A. No.187 of 1984 for review of the order dated 7.2.1984 passed in Special Civil Application No.617 of 1984. That MCA came to be rejected on 3.4.1984 in the following terms:-

"I have carefully perused all the papers and particularly the judgement of the Tribunal in the Revision Application as well as in her appeal and also in the review application. The Tribunal found that the petitioner remained deliberately absent and her previous conduct in the course of inquiry also fortified that inference. I do not see any case for interference with my earlier order in exercise of my review jurisdiction. The review application is therefore rejected."

It is thus clear that the petitioner, having lost before this Court in the aforesaid petition as well as review application, is not entitled to file another petition on the same subject matter. Not only that but the petitioner has not stated a word about the aforesaid previous petition in the memo of this petition.

4 The petition is therefore liable to be dismissed as the petitioner had already challenged the Tribunal's orders earlier and had failed. Hence petition is not maintainable. The petition also suffers from the vice of suppression of material fact about the petitioner having lost in the previous petition. The present petition is therefore an abuse of process of the Court. Hence, the petition is dismissed with costs quantified at Rs.5,000. Respondent no.1 is entitled to recover the same from the petitioner. Rule is discharged.

5 Since the main petition is dismissed, Civil Application No.3537 of 1985 does not survive and the same is disposed of accordingly.

(mohd)